



InfoSight Highlight

How Does RESPA Affect Your CU?

The Real Estate Settlement Procedures Act (RESPA), passed in 1974, is a consumer protection statute that has the following two purposes:

1. To help consumers become better shoppers for settlement services; and
2. To eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

For more information, please see the [Real Estate Settlement Procedures Act \(RESPA\)](#) topic in InfoSight.



InfoSight
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Credit Union National Association

Compliance News

What is FATCA?

Question: What is FATCA?

Answer: FATCA is the *Foreign Account Tax Compliance Act* which is part of the *Hiring Incentives to Restore Employment Act* passed by the United States (US) Congress on 18 March 2010. FATCA was enacted by Congress to target non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

Question: Who is a US person?

Answer: The term "United States person" means a U.S. citizen (including dual citizens); a U.S. resident alien for tax purposes; a domestic partnership; a domestic corporation; any estate other than a foreign estate; Trusts:

1. That a court within the United States can exercise primary supervision over the administration of the trust, and

Compliance Video

Compliance Connection Video

In this video, League InfoSight CEO Glory LeDu talks about the highlights from the 4th Quarter of 2018 and the 1st Quarter of 2019.

When S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, passed in 2018 there was a lot to understand! Glory LeDu, League InfoSight CEO, provides [Part 1 in this short video](#) to break it down for you.

Just a reminder that Compliance videos since 2016 can be found on YouTube at [the Compliance Connection](#)

2. Where one or more United States persons have the authority to control all substantial decisions of the trust.

[channel](#), where they are generally updated quarterly.

Question: What is a Foreign Financial Institution (FFI)?

Answer: Foreign Financial Institutions (FFIs) are institutions that:

- accept deposits in the ordinary course of a banking or similar business.
- as a substantial portion of its business, holds financial assets for the account of others.
- are engaged (or holding itself out as being engaged) primarily in the business of investing.
- are involved in reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Question: How does FATCA work?

Answer: FFIs are required to register with the US Internal Revenue Service (IRS) and would be assigned a Global Intermediary Identification Number (GIIN). FFIs would be required to submit information on persons with US indicia who hold accounts with them or own over 10 per cent (10%) of an entity that has an account with the FFI, where the accounts are valued over US\$50,000.00.

Question: How will FATCA affect customers?

Answer: All customers will be subject to an electronic perusal of their account information. This perusal seeks to determine which accounts have US indicia. US indicia include whether a customer has US citizenship or permanent residency. It also includes the use of US addresses, Post Office Boxes, and US telephone numbers. If these basic levels of indicia are identified, the customer will be required to disclose their legal name, address, and Tax Information Number (TIN). This information, as well as the account number, the account balance and the gross receipts and gross withdrawals or payments from the account will be sent to the IRS.

Compliance Calendar

April 24
5300 Call Report Due to NCUA

April 30
Credit Card Quarterly Agreement Submission Due to CFPB (10,000 or more open credit card accounts)

May 25
Memorial Day - Federal Holiday

July 3
Independence Day - Federal Holiday

July 18
Higher-Priced Mortgage Loans: Modified exemptions for loans secured by manufactured homes

July 23
Changes to Posting Rules for ACH Transactions (Federal Reserve) Effective date

[Click here for upcoming compliance dates.](#)

Compliance Training

Question: What are the consequences to customers for not disclosing the information required by FATCA?

Answer: Customers who do not disclose the requisite information to an FFI will have their accounts flagged as non-compliant. The FFI will be required to eventually close the account if the information is not received within a specified period of time. Until the closure of the account, a 30.0 per cent levy will be applied to any payment of interest, rents, royalties, salaries, wages, annuities, licensing fees, income, and profits derived from sources within the US.

Question: How is FATCA going to affect a credit union's foreign wire transfers? Are these transfers considered a withholdable payment?

Answer: With the current information available from the IRS, CUNA believes that wire transfers are not a withholdable payment for purposes of FATCA because the withholding agent lacks control over or custody of the money, or lacks knowledge of the facts giving rise to such payments. (Note: The IRS should be issuing clarifying guidance on FATCA, and it is expected that this topic will be further addressed.) In the meantime, wire transfers are addressed in an example in the 2013 FATCA regulation (§1.1471-2(a)(4)(i)(B)):

(B) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, which is also a participating FFI. DC pays a dividend of \$1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer \$1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See Sec. 1.1473-1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4. With respect to **the wire transfer of \$1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment.** Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the \$1,000 dividend paid to A, once Bank 1

April 14, 2015
[Collections & Bankruptcy Update](#)
Atlanta, Georgia

April 23, 2015
[The Redaction Trap - NPI Disclosure Penalties to Avoid](#) - Webinar
12:00 - 1:00 p.m. EST

April 28, 2015
[IRA Contributions](#) - Webinar
12:00 - 1:30 p.m. EST

May 5, 2015
[Understanding and Processing Transfers and Rollovers](#) - Webinar
12:00 - 1:30 p.m. EST

May 6, 2015
[Trust Accounts](#) - Webinar
12:00 - 1:00 p.m. EST

May 12, 2015
[IRA Distributions](#) - Webinar
12:00 - 1:30 p.m. EST

May 13, 2015
[Cyber Crime - No Gun Needed, Detecting and Preventing a Corporate Account Takeover](#) - Webinar
2:00 - 3:00 p.m. EST

May 13, 2015
[Estate Accounts, POAs, Rep Payee and Guardian Accounts](#) - Webinar
12:00 - 1:00 p.m. EST

May 19, 2015
[Required Minimum Distributions \(RMDs\)](#) -

credits the \$1,000 dividend to A's account, the \$1,000 becomes A's property. When A transfers the \$1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives \$1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

Question: The new IRS Form W-9 requires an "exemption from FATCA reporting code (if any)". Do credit unions need to fill out this part of the W-9?

Answer: The "exemption from FATCA reporting code" applies to persons submitting a Form W-9 for their accounts held by foreign financial institutions outside the United States. A U.S. credit union maintaining an account in the United States does not need to collect an exemption code for FATCA reporting. For such U.S. credit unions, this section of the W-9 should be left blank.

Question: We have been hearing about changes to the Form W-8BEN. Is it true that a Form W-8BEN with a U.S. TIN is no longer valid indefinitely? Does this mean that all forms expire in 3 years?

Answer: Yes and no. The March 2014 final and temporary regulations issued by the IRS (FATCA coordinating regulations) revise the validity periods for withholding certificates, such as the Form W-8BEN. It is true that under these new regulations W-8BENs with U.S. TINs are no longer valid indefinitely. Instead, the regulation lists 12 specific circumstances for allowing a withholding certificate to remain valid indefinitely, or until a change in circumstances makes the information on the documentation incorrect:

(1) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence supporting a claim of foreign status when both are provided together by an individual claiming foreign status if:

Webinar
12:00 – 1:30 p.m. EST

May 20, 2015
[Deceased Member Accounts - Webinar](#)
12:00 – 1:00 p.m. EST

May 26, 2015
[IRA Reporting - Webinar](#)
12:00 – 1:30 p.m. EST

May 28, 2015
[Indirect Lending - The CFPBs View on Auto Dealership Relationships - Webinar](#)
12:00 – 1:00 p.m. EST

June 1, 2015
[The Basics of Consumer Lending Part 1 - Webinar](#)
2:00 – 3:30 p.m. EST

June 4, 2015
[Home Equity Lending - Webinar](#)
2:00 – 3:30 p.m. EST

June 8, 2015
[The Basics of Consumer Lending Part 2 - Webinar](#)
2:00 – 3:30 p.m. EST

June 11, 2015
[Consumer Lending Compliance 101 - Webinar](#)
2:00 – 3:30 p.m. EST

June 17, 2015
[Advanced Exceptions with International ACH Transactions \(IAT\) OFAC Compliance - Webinar](#)
2:00 – 3:00 p.m. EST

(a) the withholding agent does not have a current U.S. residence address or U.S. mailing address for the payee,

(b) does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and,

(c) for a payment to an off-shore account, such as an account maintained in a foreign country at a branch of a U.S. credit union, the withholding agent has not been provided standing instructions to make a payment to an account in the United States for the obligation. This provision does not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014.

(2) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) from (i) a retirement fund, (ii) exempted nonfinancial group, (iii) 501(c) entity, (iv) non-profit, (v) nonreporting IGA FFI, (vi) territory financial institution, (vii) NFFE with regularly traded stock, (viii) an NFFE affiliate, (ix) an active NFFE with an incorrect determination that business is not financial in nature, or (x) a sponsored FFI; and documentary evidence provided by an entity supporting the entity's claim of foreign status. This provision does not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014.

(3) A beneficial owner withholding certificate provided by an entity claiming status as a tax-exempt entity under section 501(c) that is not a foreign private foundation under section 509, provided that the withholding agent reports at least one payment annually to the entity on Form 1042-S.

(4) A qualified intermediary withholding certificate, but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(5) A nonqualified intermediary certificate, but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(6) A certificate from certain U.S. branches of foreign banks or foreign insurance companies – not provided by the beneficial owner, but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

June 18, 2015

Financial Counseling - What to Look for and What to Know as a Lender - Webinar

2:00 – 3:30 p.m. EST

June 25, 2015

Use of Loan Guaranties Instead of Co-Signers - Webinar

12:00 – 1:00 p.m. EST

June 30, 2015

IRA Beneficiary Distributions - Webinar

12:00 – 1:30 p.m. EST

BSA Training Opportunities through GCUA

[Click here for details](#)

(7) [Reserved]. (A certificate furnished by a person representing to be an integral part of a foreign government).

(8) A withholding certificate provided by a withholding foreign trust (§1.1441-5(e)(5)(v)).

(9) A certificate dealing with a certificate from a person representing to be a withholding foreign partnership. (§1.1441-5(c)(2)(iv))

(10) A withholding certificate from a nonwithholding foreign partnership, but not including the withholding certificates, documentary evidence, statements or other information required to be associated with the certificate. (§1.1441-5(c)(3)(iii))

(11) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of §1.892-2T(a)(2)) in accordance with §1.1441-8(b), or by a person representing to be a foreign central bank of issue (within the meaning of §1.861-2(b)(4)) or the Bank for International Settlements in accordance with §1.1441-8(c)(1); and

(12) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation). This provision does not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014.

For more information on FATCA, please see the following resources:

- ["How FATCA Will Affect Your W-8BEN Forms"](#), *Credit Union Magazine*
- [World Council's Summary of Final FATCA Rule](#)
- [Treasury's fact sheet and FATCA webpage](#)
- [CUNA's Foreign Account Tax Compliance Act eGuide](#)

Your CU Should Know...

Financial Literacy Webinar and Chat: The NCUA has announced it will host a free webinar, "Your Mission in Action: Developing Youth Financial Literacy and Savings Programs," on **April 22, 2015, from 2-3:30 p.m. EST**. A Twitter chat is scheduled to begin at 11:00 a.m. EST.

This webinar will explore how credit unions can expand the financial capability of youth through financial literacy programs and experiential learning opportunities. These programs can contribute to the long-term financial and education prospects of youth while building loyalty and awareness to credit unions.

New SDN List Format: OFAC has announced the release of the Specially Designated Nationals (SDN) list in an XML data format that is based on the United Nations 1267/1988 Committee's Advanced Sanctions Data Model. This format gives sanctions lists new capabilities and will aid list users in executing their compliance obligations. FAQs on the new format were also released.

Bureau Launches Effort to Promote Financial Education in Schools: The CFPB has announced the launch of a nationwide effort to advance financial education in schools. A resource guide, "Advancing K-12 Financial Education: A Guide for Policymakers," has been published, providing strategies for furthering the development and implementation of financial education in states.

Deceptive Ads Cost Mortgage Lender \$250,000: The CFPB has announced it has issued a Consent Order and imposed a \$250,000 civil penalty against RMK Financial Corporation, a California based mortgage lender, for deceptive mortgage advertising practices, including ads that led consumers to believe that the company was affiliated with the U.S. government. RMK mailed print advertisements to more than 100,000 consumers in several states, using the names and logos of the Department of Veterans Affairs (VA) and the Federal Housing Administration (FHA) in a way that falsely implied that the advertisements were sent by the agencies, or that the company or the advertised mortgage products were endorsed or sponsored by the VA or FHA. RMK also sent its advertisements to tens of thousands of U.S. military servicemembers and veterans, and other holders of VA-guaranteed mortgages. The CFPB's investigation found that RMK's practices violated the Truth in Lending Act, the Mortgage Acts and Practices Advertising Rule, and other federal consumer laws. The CFPB also posted an article advising consumers that the VA does not send out mortgage ads.

Robo-Calling Debt Collectors Sued by CFPB: A [lawsuit](#) has been filed in federal court by the Consumer Financial Protection Bureau against the leaders of a robocall phantom debt collection operation, their companies, and their service providers. The [complaint](#) alleges debt collectors, using various aliases, deployed automated calls to threaten, harass, and deceive consumers in attempts to collect debt the consumers did not owe to them, and in most instances, to anyone else. The complaint also alleges that the scheme depended on the participation of the telemarketing company that sent the robo-calls and payment processors that allowed the collectors to access consumers' bank accounts.

Comment Calls

Small Entity Definition

The NCUA Board [proposes](#) to amend its Regulatory Flexibility Act (RFA) definition of small entity increasing the threshold from \$50 million in assets to \$100 million in assets.

The RFA requires federal agencies to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If a substantial number of small entities would be impacted, the RFA requires agencies to engage in a small entity impact analysis, known as an initial regulatory flexibility analysis (IRFA) for proposed rules and a final regulatory flexibility analysis (FRFA) for final rules.

This rulemaking effort is narrower in scope than NCUA's 2013 final rule that changed the asset threshold for the definition of small entity to the current \$50 million from \$10 million. That final rule changed the definition of "complex" credit union for prompt correction action in Part 702 and revised the threshold for credit unions subject to NCUA's interest rate risk rule to \$50 million. NCUA's current risk-based capital proposal would change the definition of complex to \$100 million.

The other impact of this rule is on the asset threshold for obtaining services from NCUA Office of Small Credit Union Initiates (OSCU) would be credit unions with \$100 million or less in assets.

Please send any comments or concerns you have regarding this new proposal to Selina Gambrell at selinag@gcua.org by **April 21st**.

The [CUNA Regulatory Advocacy Report](#) contains information from the office of the President of CUNA about regulatory issues that affect credit unions. You can view the current report and past reports from the archive.

Click [here](#) to request to be added to the mailing list for this and/or other GCUA email publications.

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